IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 158 OF 2005

SHRI SUBHASH BUDHO KUNDAIKAR AND ANR., ...Appellants

Versus

SHRI KASHINATH FATCO NAIK(SIN.DEC.) THROUGH L.RS., ...Respondents

Mr. J. Godinho, Advocate for the Appellants.
Mr. M. P. Almeida, Advocate for Respondent Nos. 1(a) to 1(g).
Ms. L. Dharwadkar, Addl. Govt. Advocate for Respondent No.3.

Coram:- A. P. LAVANDE, J.

Date:- 5th May, 2006

P.C.:

Heard Mr. J. Godinho, Advocate for the Appellants, Mr. M. P. Almeida,Advocate for the Respondent Nos.1(a) to 1(g) and Ms. L. Dharwadkar, AGA for Respondent No.3. This appeal is directed against the Judgment and Decree dated 28.07.2005 passed by the 1st AD-Hoc Additional District Judge, at Panaji, in Regular Civil Appeal No.116/2000 dismissing the appeal filed against the Judgment and Decree dated 08/06/2000 passed by the Civil Judge, Senior Division at Bicholim in Regular Civil Suit No. 98 of 1987.

The Appellants/Original Plaintiffs filed the suit for eviction and possession of the suit property and also claimed mesne profits. Both the trial Court as well as the 1st Appellate Court have dismissed the suit holding that the plaintiff have not been able to identify the suit property and also on the ground that the plaintiffs have not proved title to the suit property. The plaintiffs claimed title to the suit property by virtue of sale deed dated 25.08.1986 executed by one Vishnu Tamankar in their favour. In my opinion the finding as to title is based on evidence on record. Once

it is held that the plaintiffs had no title to the property, there is no question of granting any relief in favour of plaintiffs, even if it is accepted that the defendants have no right to the suit property. It is elementary that the plaintiffs has to prove his case in order to get decree from the Court.

In the present case, the findings given by both the Courts below are based on evidence on record. There is no substantial question of law involved and hence the Second Appeal is dismissed.

A. P. LAVANDE, J.

AN.